

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 16<sup>th</sup> day of February, two thousand twelve.

PRESENT: RICHARD C. WESLEY,  
RAYMOND J. LOHIER, JR.,  
*Circuit Judges*  
ROSLYNN R. MAUSKOPF,\*  
*District Judge.*

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TAMMY ZOKAITIS,

*Plaintiff-Appellant,*

v.

11-563-cv

SOCIAL SECURITY ADMINISTRATION,  
COMMISSIONER, MICHAEL J. ASTRUE,

*Defendant-Appellee.*

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\* The Honorable Roslynn R. Mauskopf, of the United States District Court for the Eastern District of New York, sitting by designation.

1 FOR APPELLANT: MITCHELL L. PEARL (Cara L. Cookson, on  
2 *the brief*), Langrock Sperry & Wool, LLP,  
3 Middlebury, VT  
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5 FOR APPELLEE: TIMOTHY LANDRY, Special Assistant United  
6 States Attorney (Carol L. Shea, Chief,  
7 Civil Division, *on the brief*), for  
8 Tristram J. Coffin, United States  
9 Attorney for the District of Vermont,  
10 Burlington, VT  
11  
12

13 Appeal from the United States District Court for the  
14 District of Vermont (Murtha, J.).  
15

16 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**  
  
17 **AND DECREED** that the judgment of the United States District  
18 Court for the District of Vermont is **AFFIRMED**.

19 Appellant appeals from the final judgment of the United  
20 States District Court for the District of Vermont (Murtha,  
21 J.), which affirmed the decision of the Commissioner of the  
22 Social Security Administration ("Commissioner") denying  
23 Appellant disability benefits under the Social Security Act.  
24 We assume the parties' familiarity with the underlying  
25 facts, the procedural history, and the issues presented for  
26 review.

27 Appellant argues that the Commissioner's decision is  
28 not supported by substantial evidence in the record.  
29 Specifically, she argues that the Commissioner erred by  
30 failing to properly evaluate: (1) Appellant's pressure

1 urticaria; (2) Appellant's credibility; (3) the opinions of  
2 Appellant's nurse and social worker; (4) Appellant's  
3 capacity to return to her former job as a cashier; and (5)  
4 the state agency consulting doctors' opinions. On review,  
5 we must set aside the Commissioner's determination if it "is  
6 based upon legal error or not supported by substantial  
7 evidence." *Berry v. Schweiker*, 675 F.2d 464, 467 (2d Cir.  
8 1982) (per curiam).

9 First, the Commissioner did not err in assessing  
10 Appellant's pressure urticaria by not including a  
11 manipulative limitation in her residual functional capacity  
12 ("RFC") concerning the use of her hands. None of  
13 Appellant's treating physicians ever concluded that her  
14 urticaria prevented her from using her hands or specifically  
15 opined as to how her symptoms of urticaria affected her  
16 ability to work. Similarly, none of her physicians ever  
17 conducted any objective tests to assess whether Appellant's  
18 condition prevented her from doing light work. In fact, the  
19 medical evidence demonstrates that Appellant's skin  
20 condition can be, and has been, controlled with appropriate  
21 medication.

1           Second, we find no error in the Commissioner's  
2   assessment of Appellant's credibility. Many of Appellant's  
3   statements concerning the intensity, persistence and  
4   limiting effects of her symptoms were inconsistent with  
5   other information in the record. We disagree with  
6   Appellant's contention that the Commissioner  
7   mischaracterized the record in evaluating Appellant's  
8   credibility. There was substantial evidence in the record  
9   to conclude that Appellant engaged in a broad range of daily  
10  activities. Indeed, Appellant's own Function Report states  
11  that she is able to "[p]ick up/[d]rop off son at headstart .  
12  . . take care of baby and clean house. Go to appointments"  
13  and "[h]elp with homework . . . or school project[s]." She  
14  also states that she is able to prepare meals daily.

15          Third, we find no error in the Commissioner's decision  
16  to give little weight to the Treatment Source Statements of  
17  Nancy Driscoll and Janine Small (Appellant's nurse and  
18  social worker respectively) based on the factors set forth  
19  in 20 C.F.R. § 416.927. Both Treatment Source Statements  
20  have significant inconsistencies with the findings in each  
21  source's progress notes. For instance, Driscoll concluded  
22  in her Treatment Source Statement that Appellant had

1 "extreme" difficulties in maintaining social functioning.  
2 But in the overwhelming majority of her progress notes,  
3 Driscoll concluded that Appellant did not have serious  
4 impairments. Similarly, although Small concluded in her  
5 Treatment Source Statement that Appellant had extreme  
6 difficulties in social functioning and marked difficulties  
7 in maintaining concentration, persistence or pace, Small  
8 consistently assigned Appellant a Global Assessment  
9 Functioning ("GAF") score of 55, which indicates only  
10 "moderate difficulty" in those functions.

11 Fourth, the Commissioner's conclusion that Appellant  
12 can return to her past work as a cashier is supported by  
13 substantial evidence. Appellant's argument that her  
14 pressure urticaria prevents her from working with her hands  
15 and returning to her job as a cashier is belied by the fact  
16 that she worked as a cashier for over two years after the  
17 onset of her urticarial symptoms. During this time, she  
18 admitted that she was handling and grabbing objects for up  
19 to eight hours per day and also occasionally carrying heavy  
20 objects that weighed up to twenty pounds. Moreover,  
21 Appellant's psychological limitations do not prevent her  
22 from returning to work as a cashier. Even accepting

1 Appellant's interpretation of the medical records, she is  
2 only limited from "intense" interaction with large or  
3 unfamiliar groups of people, which is not the hallmark of  
4 being a cashier.

5 Finally, we need not consider Appellant's argument that  
6 the Commissioner erred in giving significant weight to the  
7 opinions of the non-examining state agency medical  
8 consultants, Drs. Reilly and Cook. This issue was never  
9 raised below, and it is well settled that we generally "will  
10 not consider an issue raised for the first time on appeal."  
11 *Bogle-Assegai v. Connecticut*, 470 F.3d 498, 504 (2d Cir.  
12 2006) (internal quotation marks and citation omitted).

13 We have considered Appellant's remaining arguments and,  
14 after a thorough review of the record, find them to be  
15 without merit.

16 For the foregoing reasons, the judgment of the district  
17 court is hereby **AFFIRMED**.

18 FOR THE COURT:  
19 Catherine O'Hagan Wolfe, Clerk  
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